

Department of the Navy, DoD

§ 701.66

States Navy-Marine Corps Court of Military Review, although not indexed, are available for public inspection at the location shown in § 701.32(c).

§ 701.66 Publication of proposed regulations for public comment.

(a) *Discussion.* The requirements of this section are not imposed by statute, but are the implementation of policies and procedures created administratively in 32 CFR part 336. In effect, the pertinent provisions of 32 CFR part 336 establish, within the Department of Defense and its components, procedures that are analogous to the public rulemaking procedures applicable to some functions of other Federal agencies under 5 U.S.C. 553. While the administrative policy of encouraging the maximum practicable public participation in the Department of the Navy rulemaking shall be diligently followed, determinations by the Department of the Navy as to whether a proposed regulatory requirement originated by it comes within the purview of this paragraph and the corresponding provisions of 32 CFR part 336, and as to whether inviting public comment is warranted, shall be conclusive and final.

(b) *Classes of documents affected.* Each proposed regulation or other document of a class described in § 701.64(a) (or a proposed revision of an adopted document of any of those classes) which would “originate” within the Department of the Navy a requirement of general applicability and future effect for implementing, interpreting, or prescribing law or policy, or practice and procedure requirements constituting authority for prospective actions having substantial and direct impact on the public, or a significant portion of the public, must be evaluated to determine whether inviting public comment prior to issuance is warranted. Documents that merely implement regulations previously issued by higher naval authorities or by the Department of Defense will not be deemed to “originate” requirements within the purview of this section. If a proposed document is within the purview of this section, publication to invite public comment will be warranted unless, upon evaluation, it is affirmatively determined

both that a significant and legitimate interest of the Department of the Navy or the public will be served by omitting such publication for public comment, and that the document is subject to one or more of the following exceptions:

(1) It pertains to a military or foreign affairs function of the United States which has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy;

(2) It relates to naval management, naval military or civilian personnel, or public contracts (e.g. Navy Procurement Directives), including non-appropriated fund contracts;

(3) It involves interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(4) It is determined with regard to the document, for good cause, that inviting the public comment is impracticable, unnecessary, or contrary to the public interest.

(c) *Procedures*—(1) *Normal case.* Unless the official having cognizance of a proposed regulatory document determines under the criteria of § 701.66(b) that inviting public comment is not warranted, he or she shall cause it to be published in the FEDERAL REGISTER with an invitation for the public to submit comments in the form of written data, views, or arguments during a specified period of not less than 30 days following the date of publication. An opportunity for oral presentation normally will not be provided, but may be provided at the sole discretion of the official having cognizance of the proposed directive if he or she deems it to be in the best interest of the Department of the Navy or the public to do so. After careful consideration of all relevant matters presented within the period specified for public comment, the proposed document may be issued in final form. After issuance, the adopted document, and a preamble explaining the relationship of the adopted document to the proposed and the nature and effect of public comments, shall be published in the FEDERAL REGISTER for guidance of the public.

§ 701.67

(2) *Where public comment is not warranted.* The official having cognizance of a proposed document within the purview of this paragraph shall, if he or she determines that inviting public comment concerning the document is not warranted under the criteria of § 701.66(b), incorporate that determination, and the basis therefor, in the document when it is issued or submitted to a higher authority for issuance. After issuance, such document shall be published in the FEDERAL REGISTER for the guidance of the public, if required under § 701.64(b).

§ 701.67 Petitions for issuance, revision, or cancellation of regulations affecting the public.

In accordance with the provisions of 32 CFR part 336, the Department of the Navy shall accord any interested person the right to petition in writing, for the issuance, revision, or cancellation of regulatory document that originates, or would originate, for the Department of the Navy, a policy, requirement, or procedure which is, or would be, within the purview of § 701.66. The official having cognizance of the particular regulatory document involved, or having cognizance of the subject matter of a proposed document, shall give full and prompt consideration to any such petition. Such official may, at his or her absolute discretion, grant the petitioner an opportunity to appear, at his or her own expense, for the purpose of supporting the petition, if this is deemed to be compatible with orderly conduct of public business. The petitioner shall be advised in writing of the disposition, and the reasons for the disposition, of any petition within the purview of this section.

Subpart F—DON Privacy Program

SOURCE: 71 FR 27536, May 11, 2006, unless otherwise noted.

§ 701.100 Purpose.

Subparts F and G of this part implement the Privacy Act (5 U.S.C. 552a), and the DOD Directives 5400.11 and 5400.11-R series, DOD Privacy Program (see 32 CFR part 310) and provides DON policies and procedures to ensure that

32 CFR Ch. VI (7–1–08 Edition)

all DON military members and civilian/contractor employees are made fully aware of their rights and responsibilities under the provisions of the Privacy Act (PA); to balance the Government's need to maintain information with the obligation to protect individuals against unwarranted invasions of their privacy stemming from the DON's collection, maintenance, use, and disclosure of Protected Personal Information (PPI); and to require privacy management practices and procedures be employed to evaluate privacy risks in publicly accessible DON Web sites and unclassified non-national security information systems.

(a) *Scope.* Governs the collection, safeguarding, maintenance, use, access, amendment, and dissemination of PPI kept by DON in PA systems of records.

(b) *Guidance.* Provides guidance on how to respond to individuals who seek access to information in a PA system of records that is retrieved by their name and/or personal identifier.

(c) *Verify identity.* Establishes ways to verify the identity of individuals who request their records before the records are made available to them.

(d) *Online resources.* Directs the public to the Navy's PA Online Web site at <http://www.privacy.navy.mil> that defines the DON's PA Program, lists all Navy, Marine Corps, and Government-wide systems of records and provides guidance on how to gain access to those records.

(e) *Rules of conduct.* Governs the PA rules of conduct for personnel, who will be subject to either civil or criminal penalties for noncompliance with 5 U.S.C. 552a.

(f) *Privacy impact assessment (PIA) requirements.* Establishes requirements for conducting, reviewing, approving, and publishing PIAs.

§ 701.101 Privacy program terms and definitions.

(a) *Access.* Review or copying a record or parts thereof contained in a system of records by any individual.

(b) *Agency.* For the purposes of disclosing records subject to the PA between or among DOD components, DOD is considered a single agency. For all other purposes, DON is considered an agency within the meaning of PA.